

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Verizon Telephone Companies)	WC Docket No. 02-362
Tariff FCC Nos. 1 & 11,)	
Transmittal No. 232)	
)	

ORDER

Adopted: January 15, 2003

Released: February 3, 2003

By the Commission: Commissioner Martin approving in **part**, dissenting in part, and issuing a statement.

1. In this order, we terminate the investigation into the tariff revisions described in Verizon Telephone Companies (Verizon) Tariff FCC Nos. 1 and 11, Transmittal No. 232. As discussed below, the investigation is moot.

2. On August 9, 2002, Verizon filed Transmittal No. 232, revising certain provisions of its interstate access tariff FCC Nos. 1 and 11, to become effective August 24, 2002.¹ This transmittal introduced Packet At Remote Terminal Service (PARTS), an access service using Digital Subscriber Line technology. Verizon subsequently deferred the effective date of the subject revisions to September 4, 2002.² On September 3, 2002, the Wireline Competition Bureau (the Bureau) released an order that suspended the tariff revisions for one day, set them for investigation, and imposed an accounting order.³ On November 18, 2002, the Bureau released an Order Designating Issues for Investigation in the proceeding.⁴ Verizon withdrew the PARTS offering on November 25, 2002.⁵ In its transmittal withdrawing PARTS, Verizon states that it has no customers for the PARTS service.⁶ Verizon's withdrawal renders moot the Commission's

¹ Verizon Telephone Companies Transmittal No. 232, Tariff FCC Nos. 1 and 11 (filed Aug. 9, 2002).

² Verizon Telephone Companies Transmittal No. 236, Tariff FCC Nos. 1 and 11 (filed Aug. 23, 2002).

³ *Verizon Telephone Companies Tariff FCC Nos. 1 & 11, Transmittal No. 232*, Order, 17 FCC Rcd 16529 (Wireline Comp. Bur. 2002).

⁴ *Verizon Telephone Companies Tariff FCC Nos. 1 & 11, Transmittal No. 232*, WCB Docket No. 02-362, Order Designating Issues for Investigation, 17 FCC Rcd 23598 (Wireline Comp. Bur. 2002).

⁵ Verizon Telephone Companies, Transmittal No. 266, Tariff FCC Nos. 1 and 11 (filed Nov. 25, 2002).

⁶ *Id*

investigation of Verizon's tariff revisions. Accordingly, **we** terminate the investigation of those revisions.

3. ACCORDINGLY, IT IS ORDERED that, pursuant to section **204** of the Communications Act of 1934, **as** amended, 47 U.S.C. § **204**, the investigation and accounting order imposed **by** the Wireline Competition Bureau in CC Docket No. 02-362 with respect to the Verizon Telephone Companies Revisions in Tariff FCC Nos. 1 & 11, Transmittal No. 232, **ARE TERMINATED.**

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER KEVIN J .MARTIN**

**Re: *Verizon Telephone Companies Tariff* FCC Nos. 1 & 11, *Transmittal No. 232*; WC
Docket No. 02-362**

I am disappointed that the Commission may have missed an opportunity to promote further the deployment of broadband services to all Americans.

Last summer, Verizon attempted to introduce a new service (Packet At Remote Terminal Service "PARTS") that would have provided new entrants with another option to use Verizon's network to provide competitive high speed internet access service to residential customers. This generally available service offering would have enabled competitors to maintain access while facilitating Verizon's attempt to provide DSL service to more residential customers. By using recently deployed network facilities, Verizon was "extending the reach" of its existing broadband network to serve remote end-users.'

In making this voluntary offering, Verizon sought to recover the costs of providing competitors with access to its new next generation Digital Loop Carrier ("NGDLC") network by pricing the service at its incremental cost. Without full Commission input, the Wireline Competition Bureau ("Bureau") noted that it is more appropriate to require Verizon to price this service at the total element long-run incremental cost ("TELRIC") standard.

On November 18, 2002, the Bureau issued a detailed order designating the PARTS service for investigation. One week later, Verizon decided to withdraw the PARTS service as a generally available offer, and instead make such offering available only on a private carriage basis tailored to specific individual requests by new entrant carriers.

I am disappointed with Bureau's unilateral action in this tariff investigation. **As** I have stated previously, the TELRIC pricing formula provides incumbent service providers with an insufficient return on new investment capital for new infrastructure. Given the nature of this voluntary service offering, the Commission missed a unique opportunity here to take a more deregulatory approach and provide the incumbent with greater pricing flexibility. Such flexibility provides the type of economic incentives necessary for service providers to invest in and deploy new network infrastructure that will make broadband services available to more American consumers.

This agency's heavy handed regulatory approach fails to recognize our own data that acknowledges Cable as the dominant provider of residential high speed internet access services.

¹ *Verizon Telephone Companies Tariff* FCC Nos. 1 & 11, *Transmittal No. 232*. Order Designating Issues for Investigation, DA 02-3196, WC Docket 02-362, (rel. Nov. 18, 2002).

Consistent with recent admonitions from the courts and **as** I have stated previously, the Commission has no choice but to recognize this fact as it decides whether incumbent DSL providers should be treated **as** dominant carriers when they provide high speed Internet access services in competition ~~with~~ Cable.

This agency's apparent desire to continue to impose legacy regulation — and **an** unaltered TELRIC pricing regime--on all new broadband network investment and infrastructure has effectively shut down an incumbent's effort to make such facilities generally available to new competitors at prices that allow the ILEC to recover a sufficient return on investment. The long-term consequences of affirming this policy is only to further delay investment **and** deployment of facilities necessary to provide Americans in all regions of the country with broadband services.